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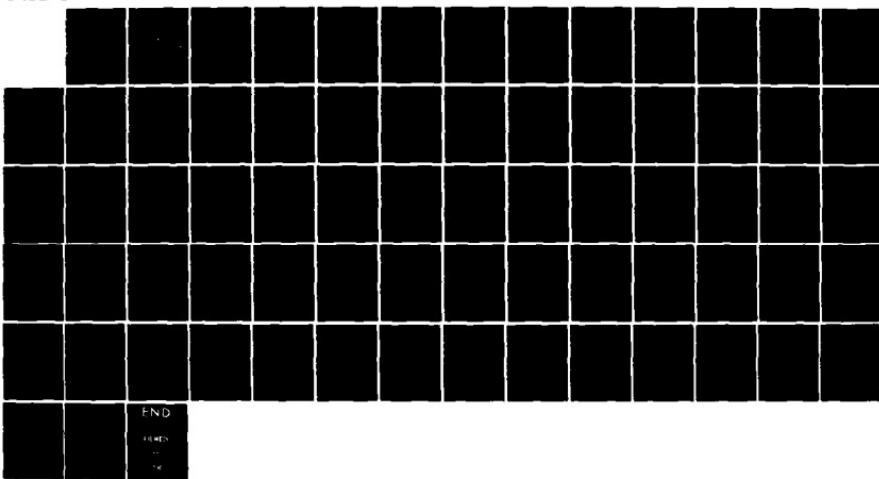
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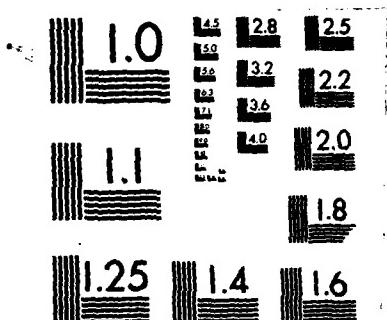


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THESIS

DIPLOMATIC PRIVILEGE AND IMMUNITY--
ABUSE AND EXPLOITATION BY
INTERNATIONAL TERRORISTS

by

James S. Osborne, Jr.

March 1985

Thesis Advisor:

R. Stofli

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Abuses associated with the implementation of political terrorism are taking place and are apparently increasing. States sponsoring international terrorists have seized the initiative and are exploiting the privileges granted to diplomats as a means of increasing the capabilities of the terrorists. The battle against terrorism is an important one and countermeasures to combat terrorist abuses of diplomatic privilege must be developed.

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Diplomatic Privilege and Immunity--
Abuse and Exploitation by International Terrorists

by

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Lieutenant, United States Navy
B.P.A., University of Mississippi, 1977

Submitted in partial fulfillment of the
requirements for the degree of

MASTER OF ARTS IN NATIONAL SECURITY AFFAIRS

from the

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ABSTRACT

International terrorism is a serious problem in the world today threatening the security and stability of large world powers as well as relatively weaker third world nations. Violence and terror as tools for modern revolution are commonplace and terrorists are constantly seeking new ways to increase their mobility, strength, credibility, and visibility.

Diplomatic agreements have been developed over the years as a means of protecting the official government representatives serving in consulates and embassies in foreign countries from official harassment and interference with their official duties. Privileges and immunities from civil and criminal actions are granted between nations which maintain diplomatic ties because officials are personal representatives of their heads of state.

Abuses associated with the implementation of political terrorism are taking place and are apparently increasing. States sponsoring international terrorists have seized the initiative and are exploiting the privileges granted to diplomats as a means of increasing the capabilities of the terrorists. The battle against terrorism is an important one and countermeasures to combat terrorist abuses of diplomatic privilege must be developed.



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I. INTRODUCTION

In April, 1984 someone shot and killed a British policewoman with an automatic weapon fired from a window of the Libyan People's Bureau in London. The following July a British Custom's agent stopped two crates being shipped from London to Nigeria, ostensibly diplomatic pouches, which contained four men, one of which was a Nigerian exile that the Nigerian government wanted returned to their country for trial. Agents from Nigeria kidnapped and were attempting to smuggle the man back to their country through diplomatic channels so that he could be tried on charges brought against him by the new military government. On May 13, 1981 a man attempted to assassinate Pope John Paul II in Rome. The man was apprehended and later confessed that he and an accomplice were hired by agents from Bulgaria and their escape had been arranged by the Bulgarian government using diplomatic vehicles from the Bulgarian Embassy in Italy. These examples are only a few in which terrorists and nations have abused the privileges granted to diplomats to accomplish their missions. Also significant is the fact that evidence indicates and reason dictates that the governments involved had prior knowledge of the events and supported the questionable acts in them.

International terrorism is a growing problem. State support of terrorism increases the problem and makes it more difficult to combat. The terrorists often seem to be one step ahead of those who would counter them and their tactics take advantage of every opportunity afforded them. The terrorists have the special advantage of the initiative of selecting their targets and the element of surprise in attacking them. By exploiting these advantages and other tools available, they are able to strike in carefully planned setpiece attacks having high probability of success.

Diplomatic laws have been developed over the years in an effort to afford every protection to men conducting government business among nations. Freedom from arrest, detention, and general harassment are guaranteed to diplomats so that they may accomplish their mission. Similar protection of embassies and diplomatic bags is an important aspect of diplomatic privilege. States supporting terrorists have allowed those terrorists to take advantage of the privileges granted to diplomats to transport weapons and people and support their acts of violence.

A. INTERNATIONAL TERRORISM

International terrorism is not a new problem but it is one which has grown tremendously in the past few years in its scope and magnitude. There are many arguments about who or what groups are international terrorists but most people

who study the problem agree that terrorism is a political phenomenon, related to revolutionary movements. The U.S. Department of State defines terrorism as "premeditated, politically motivated violence perpetuated against noncombatant targets by subnational groups or clandestine state agents," and international terrorism as, "terrorism involving citizens or territory of more than one country" [Ref. 1]. Generally terrorist groups do not have the power base necessary to support a full scale revolution nor the ability to run a government if they were able to take over. Instead, the terrorists mount attacks which generate fear by the outrageous display of violence designed to attract maximum media coverage. They want to publicize their political goals and demands and perceived social injustice.

The fact that terrorist attacks have not increased significantly in the past five years does not necessarily mean that the problem is stabilizing or declining. The most notable statistic is the fact that although the number of attacks remained somewhat constant (an average of 500 per year from 1979 to 1983; unfortunately the statistics for the first six months of 1984 show a 25% increase in incidents over the same period of 1983) the number of casualties suffered in those attacks rose significantly in 1983. There were 1,925 casualties in 1983 (652 killed and 1,273 injured), the most since comprehensive records began being

kept in 1968. The alarming increase is due in part to the fact that a number of terrorist groups have attacked lower level targets with higher casualties rather than attempt to strike high level but well protected targets. A prime example of this is the October, 1983 bombing of the French and U.S. military facilities in Beirut which left over 300 dead. The weapons of choice in 1983 appeared to be various types of bombs with very high explosive content which produce high numbers of casualties indiscriminately and effectively. Such weapons and tactics are difficult to defend against, they cause great destruction, and they attract widespread publicity.

The most disturbing fact of the continuing struggle against international terrorism is the evidence of increased state support of international terrorists. Facts indicate that Syrians and Iranians bombed three major installations in Beirut and Kuwait, North Korean military personnel planted a bomb in Rangoon that killed members of the South Korean Cabinet, and as discussed previously a member of the Libyan People's Bureau in London killed a British policewoman. [Ref. 2]

Governments are not only directly involved in terrorist acts by sending their agents to perform the attacks, but are also supporting terrorists with arms, supplies, money, transportation, and refuge. The fact that the Soviet Union

and its Eastern Bloc allies have for a long time provided training bases and weapons for terrorists is well known. The London Economic Summit in June, 1984 noted with serious concern that the incidents of abuse of diplomatic privilege and immunity were increasing and that the evidence of states supporting terrorists was also increasing. [Ref. 3]

Historically, governments implement countermeasures to combat terrorism after a particular act becomes a common occurrence. An example is the practice of skyjacking. Although this type of terror still happens occasionally, recent cooperation effected among nations and the associated practices implemented internationally have appreciably decreased the incidents of skyjacking. Similarly, the problem of abuses of diplomatic agreements must be addressed and effective measures implemented to halt such abuse before it becomes unmanageable. Governments must be concerned that a breakdown of diplomatic relations worldwide caused by continued violations of diplomatic agreements would be detrimental to world peace and security. The continued growth of international terrorism also has serious implications in the future for world political stability.

B. DEVELOPMENT OF DIPLOMATIC LAWS

In 1961, the Vienna Convention on Diplomatic Relations became the standard for diplomatic law worldwide. This is not the first such agreement though it is generally accepted

today as the basis for relations between nations and it is by far the most comprehensive. Since nations appeared historically there has been conflict among them, and diplomatic rules and agreements have been used to settle disputes, particularly in modern times. A diplomat from a nation conducting government business abroad has long been recognized as the personal representative of his head of state and has been treated with the respect and dignity such position would require. Simple courtesies extended between nations included personal immunity from arrest or detention of the diplomat and his family and staff, inviolability of the mission, and protection of diplomatic pouches. In many cases these privileges were accepted as traditional or as unwritten agreements between civilized nations. The Vienna Convention was the culmination of efforts to formalize the agreements and gain worldwide acceptance of the rules for diplomatic relations.

The political structure of the world is constantly changing, causing instability in international agreements. In fact, many attempts to reach agreements between nations have failed. For example, the League of Nations and the Treaty of Versailles in the inter-war years were failures because of the mistrust among the participants. These failures were important factors in the beginning of World War II. The tendency toward failure holds true in most

cases except when discussing diplomatic relations.

Theoretically at least, nations have always extended certain privileges to representatives of other governments. It is understood that the head of state is not capable of conducting all matters of business personally and that he appoints representatives with certain powers and authority to act for him particularly in routine matters with other governments. Because of this practice three theories were born which apply to diplomatic relations. The theories are personal representation, extritoriality, and functional necessity. [Ref. 4]

Personal representation, as just discussed, simply means that the diplomat is the personification of the ruler of his sovereign state and should be granted the same respect due the ruler [Ref. 4: p. 2]. The theory of personal representation can be found in practice in many ancient civilized societies such as the Greek and Roman Empires. Exterritoriality is the theory that a mission established on foreign soil becomes a part of the sovereign nation represented. This theory has less support but in modified terms it may still be accepted [Ref. 4: p. 7]. The functional necessity theory is the basis for most of the rules adopted by the Vienna Convention. This theory states that a diplomat must have some degree of immunity and protection in order to efficiently accomplish his tasks [Ref. 4: p. 17].

The changes in the political structure of the world throughout the centuries have caused numerous changes in treaties and agreements. Although nations change and governments rise and fall, the basic nature of diplomatic relations has remained constant. States that are diametrically opposed in political theory and ideology maintain relations and agreements unless they are involved in direct conflict. At those times when nations break diplomatic relations, the breaks are generally temporary. Strong diplomatic ties are recognized as a major factor in world stability and security.

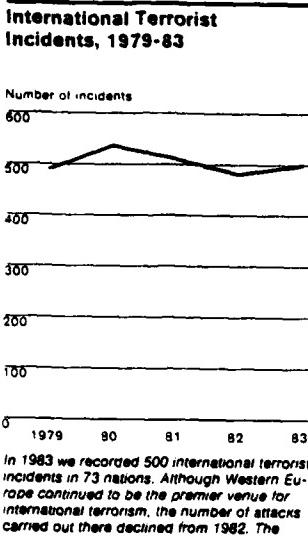
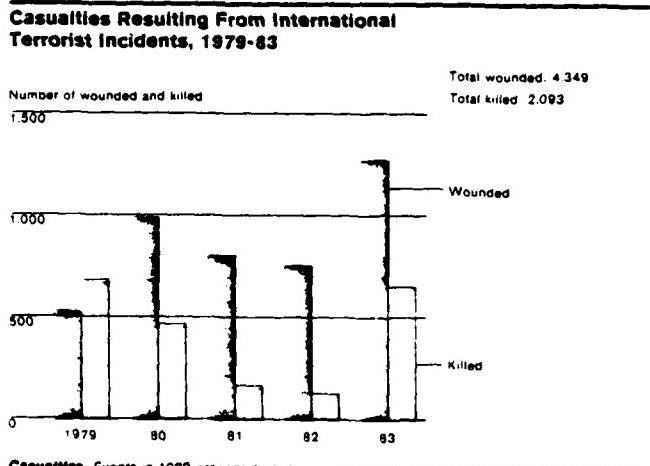


Figure 1.1. International Terrorist Incidents, 1979-83



Casualties. Events in 1983 presaged what may be the beginning of a more deadly trend—high-casualty strikes against lower-level targets. We noted 1,925 casualties (652 killed and 1,273 injured) resulting from 116 international terrorist incidents, the highest casualty figure we have recorded since we began keeping records in 1968. Almost half of the terrorist casualties suffered in 1983 were linked in a broad sense to state involvement in terrorism.

Figure 1.2. Casualties Resulting From International Terrorist Incidents, 1979-83

Source: U.S. Department of State, Patterns of Global Terrorism: 1983

II. VIENNA CONVENTION ON DIPLOMATIC RELATIONS, 1961

In 1961, representatives of eighty-one nations met in Vienna to draft what is known as the Vienna Convention on Diplomatic Relations. The product of the convention was an agreement on the issues of diplomatic processes, diplomatic privileges and immunities, and definitions of diplomatic relations. Prior to the convention, from 1956 to 1959, a special draft of the proposed agreements prepared by a Special Rapporteur to the International Law Commission of the United Nations circulated among member nations. The governments were asked to review the proposal, recommend changes, and make comments. After reviewing the comments, the Commission sent a revised draft to participating nations for further recommendations. The culmination of this process was the conference held in Vienna in 1961. [Ref. 5]

The agreements reached at Vienna depend on two important factors. First and most significant is that the strength of the agreements is based on reciprocity. Each nation can count on receiving the same treatment it gives. States could be assured that nations ratifying the Convention would afford the same protection to diplomats and missions as they received. The second factor in the success of the Convention is the fact that the rules had been accepted and

generally abided by for several hundred years. Although the agreements were not written in one comprehensive document, governments had been following them for a long time. The Convention simply codified many long-standing and understood rules of behavior [Ref. 5: pp. 2-3]. Ten years after its introduction the Convention had been ratified by 112 states. Several governments have come and gone in the last two decades but nations which originally signed the Convention have generally continued to operate by it. The general consensus is that the Vienna Convention is a successful worldwide venture.

A. THE BASIC AGREEMENTS

The Vienna Convention on Diplomatic Relations consists of a preamble and fifty-three articles. It is a comprehensive arrangement of diplomatic laws which covers practically every point on which there was a previous legal rule or accepted practice.

The Preamble is especially important because it states a central theme to the entire Convention which is, "that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States" [Ref. 5: p. 5]. The purpose of the Convention was also emphasized to be one of promoting the friendly relations and maintaining world peace and security. Finally the Preamble

points out that any situation not covered should be governed by customary international law [Ref. 5: p. 7]. A particularly important article from the view point of terrorist abuse is the following one.

1. The Mission (Buildings and Grounds)

Article 22 of the Vienna Convention states,

"1. The premise of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution."

Article 30 of the Convention says,

"1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability."

Articles 22 and 30 clearly define the inviolability of the mission premises by the receiving State. The buildings and grounds of the mission, including the residence of a diplomatic agent, are immune from search or from entry and the receiving State is responsible for the safeguarding of the mission. Note that in 1980 the government of Iran did not fulfill its obligation to protect

the American Embassy nor in two cases in Lebanon in 1983 and 1984 did the government protect the U.S. missions. However, Great Britain abided by the letter of the law in April, 1984 by not entering the premises of the Libyan People's Bureau after someone from that mission killed a British citizen though it is unclear who if anyone at the People's Bureau enjoyed diplomatic status.

2. The Diplomatic Bag

Paragraphs 3 and 4 of Article 27 deal specifically with the diplomatic bag or pouch stating,

"3. The diplomatic bag shall not be opened or detained.

4. The packages constituting the diplomatic bag must bear visible marks of their character and may contain only diplomatic documents or articles intended for official use."

The potential for abuse or problems is greatest in the area of diplomatic bags. Some nations interpret paragraph 3 very strictly and do not use any method of inspection of the bag. Some hold that x-rays or other means of inspecting the bag without opening or detaining it are allowed. Some nations now agree that if the receiving State has reason to believe that the bag contains objectionable materials they may request the representative of the sending State to open the bag for inspection or may refuse its entry. The ever present problem of reciprocity still remains a factor in determining how to treat the diplomatic bag.

3. The People Assigned to the Mission

There are different degrees of privilege which are granted to members of a mission, for example, full immunity for diplomatic agents, partial immunity for some staff members, and no immunity for general service (janitors, maids, etc.) personnel. Paragraphs 5 and 6 of Article 27, and Articles 29, 31, 32, and 37 specify some of the privileges granted to diplomats and their families as follows,

"5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate diplomatic couriers ad hoc. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge."

Article 29.

"The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom, or dignity."

Article 31.

"1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b), and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State."

Subparagraph 1 of Article 31 may seem contradictory but the basic idea is that a diplomat is immune from civil and administrative jurisdiction except in cases where he enters into contractual agreements or commercial activities as a private person in no way representing his sending state.

Article 32.

"1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under Article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to

imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary."

Article 37.

"1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36."

B. STATES' RESPONSIBILITIES

The immunities and privileges granted to diplomats are important and it is easy to see the difficulties involved in diplomatic relations if there were no such agreements. An important note is that the articles stated above are open to abuse. These articles, however, only reflect the specific privileges granted to diplomats and the protection of the mission. There are articles which prescribe the duties of States to cooperate with the intent of the agreements and obligate the persons enjoying diplomatic privilege to fulfill their duty to respect the receiving State's law and not to take advantage of their status for personal gain or to interfere in the internal affairs of the receiving State. There are also specific courses of action that nations may take if they feel the Articles of the Convention have been violated. These range from declaring the diplomatic agent "persona non grata" (basically, no longer welcome) to breaking diplomatic relations.

C. VIENNA CONVENTION ON CONSULAR RELATIONS

In addition to the Vienna Convention on Diplomatic Relations, a convention for consular relations was held in 1963. The Convention on Consular Relations in contrast to the Convention on Diplomatic Relations governed members staffing consulates throughout the world rather than embassies. There are many immunities and privileges granted to members of consulates but not nearly of the scope of diplomatic privileges. In most cases, privileges only apply to members in direct performance of their consular duties and generally do not include immunity from criminal prosecution for alleged felonies. The exceptions granted in the United States are to consular employees of the Soviet Union, Poland, and Hungary with whom our government has specific bilateral agreements which entitle those persons significantly greater privileges.

The important article of immunity for consulates which is the same as for embassies is that of inviolability of the premises. Consulates are held to be inviolable to search or entry in the same manner as embassies. Receiving states may not enter the premises without permission of the sending state. [Ref. 6]

III. CASES OF ABUSE: HISTORICAL ANALYSIS

The need for diplomatic privilege and immunity is obvious, but the potential for abuse is great and there is evidence that the misuse of those privileges and deviations from the original intent of the Vienna Convention is an increasing problem. Some of the problems are relatively minor, such as states using their embassies to protect or transport non-diplomatic personnel or using the diplomatic pouch to transport goods and materials other than those needed for the operation of the mission. Documented cases report the use of diplomatic bags for such items as shirts being sent to the home state for laundering, canned foods which are not available being brought in, and jewels and watches bought cheaply and smuggled for sale at substantial personal profit. These abuses are neither a threat to national security nor liable to lead to significant increase in criminal activities. There are also cases of abuse, however, which are more serious and detrimental to good diplomatic relations. In 1961 and 1964, Latin American diplomats were caught smuggling heroin into the United States [Ref. 7]. In 1958, officials in Lebanon searched an automobile driven by a Belgian diplomat to Syria and found 33 submachine guns, 28 pistols, 32 revolvers, 16 hand

grenades, 1800 rounds of machine gun ammunition, 1500 rounds of other ammunition, several time bombs, and some demolition equipment [Ref. 8]. These weapons were significantly more than he would need for personal protection or even for use in his embassy. Recently the abuse of diplomatic privileges and immunities has been more widely publicized. Three cases specifically point out the potential for serious problems: the killing of a British policewoman and kidnapping of a Nigerian exile in London, and the assassination attempt on Pope John Paul II in Rome. Each of these cases was a specific criminal act, dangerous because of the potential to cause or escalate problems among states. For purposes of this thesis, however, only the factor of abusing diplomatic privilege is important. Each of the incidents involved at least one abuse of the Vienna Convention.

Another concern in the problem of violation of the international agreements associated with diplomatic immunity is that some practices have become routine and are now generally condoned and accepted. Included is assigning trained intelligence personnel to diplomatic posts with the mission of covert intelligence collection. Such personnel violate at least the intent of the Convention and the designed mission of embassies and consulates.

B. GREAT BRITAIN

The government of Great Britain has had recently more than its share of problems with terrorism. The Irish

Republican Army is more than a thorn in the side of the British. For all practical purposes a war is going on in Northern Ireland. The IRA is not just a small band of terrorists occasionally causing a stir with some isolated acts of violence but rather a well organized and massively supported group of political revolutionaries. In addition to the problems caused by the IRA, Great Britain has recently been the focus of worldwide attention for two new terrorist-type events involving the governments of Libya and Nigeria. Both incidents are to date the most blatant, proven abuses of diplomatic privilege and immunity; criminal acts were carried out involving diplomatic personnel and/or embassies. Such an assertion is based neither on speculation nor circumstantial evidence but rather "smoking gun" proof. The governments involved were caught in the act.

1. Libyan People's Bureau, April 1984

On April 17, 1984, a group of seventy Libyan citizens gathered outside of the Libyan People's Bureau (Libya's title for its embassies). Its purpose was to hold a peaceful demonstration against the policies and practices of Libya's radical leader, Colonel Muammar Qaddafi. Most of the demonstrators wore masks to hide their identities because of the fear of repercussions against themselves and their families by the Libyan government. Colonel Qaddafi stated publicly that he would search out and destroy

dissidents and exiles who protested against Libya. London police officers were on the scene of the demonstration to ensure that the protest remained peaceful and to maintain order. They were also there to protect the demonstrators. The government of Libya requested that the British not allow the demonstration and warned of possible problems if the demonstration did take place.

Suddenly the sound of gunfire rang throughout St. James Square and one police officer and eleven civilians lay on the ground bleeding. Witnesses say, and evidence proves, that the shots came from a window of the People's Bureau. The police officer, a woman named Yvonne Fletcher, and the wounded civilians were removed from the area and sent to various places for treatment. Police began to clear the area and soon had cordoned off the block, evacuated all nearby buildings and began what turned out to be a long waiting game between the police and the 20 to 30 suspected persons inside the Libyan mission. Negotiations began almost immediately between the two governments. Britain demanded permission to enter the embassy, search the premises, and question the people inside. Libya flatly refused, claiming the tenets of the Vienna Convention granting inviolability of the embassy and immunity for the diplomatic personnel. Adding to the problem was the fact that the British did not know who was inside the building

and who had diplomatic immunity because the Libyans had failed to properly certify the diplomats assigned with the British government as required by the Vienna Convention. The Libyans later denied that their personnel were involved and charged that the British and Libyan dissidents had conspired to stage the incident in order to embarrass Libya and to break diplomatic rules and enter the Libyan People's Bureau. [Ref. 9]

Shortly after the shooting, Officer Fletcher died from her wounds during surgery. The situation became more intense and the British were outraged. The night before the shooting a communication from Libya to the mission was intercepted, but it was not decoded until after the incident. The communication, which instructed the members of the mission to defend themselves and use their weapons to eliminate demonstrators, was released to the public and further exacerbated the problem. Tying the hands of the British government was the fact that its embassy in Tripoli had been surrounded by Libyans and fear of reprisals against its personnel was real. There were also approximately 8000 British citizens in Libya who could not be protected.

[Ref. 10]

There was a standoff between the police surrounding the embassy and the persons inside while tense negotiations took place between the two governments. The final result

after nine days of talks was that Britain severed relations with Libya, ordered the mission closed and the personnel expelled. The reciprocal closing of missions took place without serious incident. The British stood by and watched passively as 30 people walked out of the Libyan mission in groups of five and into waiting police vans which transported them to Heathrow Airport. From there they boarded a plane which took them to Tripoli. Also on the plane were 18 bags sealed as diplomatic pouches. The British government agreed not to interfere with the people or the bags as they left the country. Among the 30 people, the person who killed Fletcher walked to his freedom and in one of the bags the automatic weapon he used was probably hidden. Just before leaving, the Libyans requested permission to make one last visit to London's banks and stores. Permission was denied. The person or persons who fired the shots that killed a British citizen left the country without any form of punishment. Subsequent examination of the premises of the People's Bureau did produce evidence which proved that an automatic weapon had been fired from the embassy and it was of a caliber and type that matched the weapon that killed Fletcher. [Ref. 11]

2. Nigerian Exile, July 1984

Less than three months after the incident at the Libyan embassy, another situation occurred in London in

which the rules of the Vienna Convention were broken and the privilege of the diplomatic bag was abused. A customs official at Stansted Airport was suspicious of two crates which were being loaded onto an aircraft for a flight to Nigeria. The crates were marked as diplomatic pouches with seals from the Nigerian Embassy. There was also a courier accompanying the crates. The problem began when the officer noted that the crates were improperly marked and on further examination found that the courier did not have proper documentation of his authorization as a diplomatic courier. The crates were ordered opened in the presence of an official from the Nigerian Embassy. Inside the crates were four men, one of whom was Umaru Dikko, an exile from Nigeria. Dikko had been a powerful figure under his brother-in-law, the President of Nigeria, before a military coup ousted the existing government and took control. Dikko fled to London and took up residence there in a very expensive fashion. The new military government charged that Dikko had embezzled millions of dollars from the nation and wanted him returned to Nigeria for trial. Normal methods for effecting extradition were not utilized but rather mercenaries were hired to help kidnap and bring Dikko back to stand trial. The other three men inside the crate were Israelis, one an anesthesiologist who administered drugs to keep Dikko unconscious during the trip. The Israeli

government denied involvement in the kidnapping. Subsequent evidence proved that the Israeli government was not involved. The Israelis arrested were simply mercenaries with no official connection to Israel.

Several other people were initially arrested, questioned and released. The other man charged with the kidnapping was a Nigerian diplomat from Lagos but he was not certified in London and so did not qualify for immunity under the Vienna Convention. Other members of the Nigerian Embassy refused to waive their immunity and answer questions concerning the case. At the time of the discovery, several cars from the Nigerian Embassy were at the airport with a number of diplomats. [Ref. 12]

Again after tense negotiations, the governments made no significant progress and diplomatic relations were strained. British officials finally expelled two high ranking diplomats and informed the Nigerian High Commissioner (ambassador), who was in Lagos conferring with his government, that he was no longer welcome in Great Britain. This move was reciprocated by Nigeria and fell just short of a total break in formal relations. Once again diplomats who were directly implicated in a major felony escaped punishment by way of diplomatic immunity [Ref. 13]. Currently the two governments maintain relations but the diplomats who were expelled have not been replaced.

In January 1985, the government of Nigeria filed formal papers requesting extradition of Dikko. In commenting on the request a radio report from Lagos said that, "the ball was now in the British court," and that the request was "an opportunity for Britain to restore and restrengthen relations between her and Nigeria" [Ref. 14]. The request for Dikko's extradition was denied.

B. ITALY

Italy is another nation plagued by terrorism. The Italian Red Brigades comprise internationally known terrorist groups which have claimed responsibility or have been charged with hundreds of terrorist acts since they were first identified in the 1960's. The Red Brigades gained international attention in recent years after a period of relative calm by the kidnapping and assassination of Italy's leader of the Christian Democrat Party, Aldo Moro, in 1978 [Ref. 15], and the kidnapping of United States Army Brigadier General James Dozier in 1981. Italy has also been the scene of many other terrorist activities sometimes acting as a battleground for opposing groups such as the Palestine Liberation Organization and the state of Israel. Few other acts, though, have caused as much of a stir as the attempted assassination of Pope John Paul II in 1981. This attempt was definitely a political, terrorist attack but it was also a major conspiracy involving at least four nations.

Continuing investigations prove that a conspiracy exists.

All the evidence discovered has not been released as of January 1985.

1. Assassination Attempt on Pope John Paul II,
May 1981

In the early evening of May 13, 1981, Pope John Paul II was finishing a normal tour of St. Peter's Square in his white jeep, shaking hands and waving to thousands of onlookers. At 5:17 P.M. several shots (witnesses reported hearing from 2 to 5 shots) were heard and the Pope suddenly slumped over in his jeep with blood showing on his white robes. He was rushed to a nearby Catholic hospital while the crowds and police subdued a young Turkish man who had a Browning 9-mm semiautomatic pistol in his possession. The man was soon identified as Mehmet Ali Agca, 23, an escaped convict from a prison in Istanbul where he had been serving a life sentence for murdering a Turkish newspaper editor in 1979. All evidence indicated that Agca acted alone in his attempt on the pontiff [Ref. 16]. Speculation abounded as to whether he was a religious fanatic, a political terrorist or simply a "crazy" attempting to gain international notoriety.

Agca confessed to the crime and stated several times that he acted alone. He was convicted and sentenced to life imprisonment. Case closed? Not quite. Several months after beginning his prison term, Agca began indicating that

he wanted to change his confession. For the next three years Agca told a story of an international conspiracy in the plot to kill the Pope. An Italian judge was assigned to investigate the case further. The revelations of the confession of Agca and the corroborating evidence discovered by the judge were astonishing. Agca told an intriguing tale of international travel, terrorist training camps and a plot to kill John Paul by the Bulgarian secret police. He was hired by the Bulgarians as a professional hit man and arrangements for the shooting and his escape were made by at least three Bulgarian citizens in Rome, two of whom were diplomats assigned to the embassy in Rome. [Ref. 17]

During the 18 months between Agca's escape from prison and the assassination attempt on the Pope, he traveled extensively throughout Europe. Agca went on an apparent extended vacation spending as much as fifty thousand dollars during his travels. Most important to this time is the fact that he spent 50 days in Bulgaria, in spite of the Bulgarian law that allows Turks to remain in their country for only 30 hours without special permission. The Bulgarians denied any knowledge of Agca's claim that he was in Bulgaria for that amount of time, even though the Bulgarian secret police are noted for their efficient methods of knowing most things that take place in their country. During his stay in Sofia, the Bulgarian capital,

Agca claims to have met several members of the Turkish mafia. It was in Sofia also that he bought the pistol he used in the attack and obtained his counterfeit passport which allowed him freedom to travel [Ref. 17: p. 140].

After leaving Sofia, Agca also visited Yugoslavia, France, Switzerland, Tunisia, Spain, and Austria. He made several visits to Italy and Sicily, too, stopping in Palermo, Milan, Perugia, and Rome [Ref. 18]. These were not the travels of an insane, poor Turk.

Agca's version of the plot was that the Bulgarian agents had made his living arrangements in Rome, gone through rehearsals of the assassination with him, brought him to St. Peter's Square the day of the attack, and were to have provided his means of escape via diplomatic vehicles from the embassy. (Some evidence and speculation indicate that in actuality other conspirators were to kill Agca to cover the plot after he shot the Pope.)

The significant fact in this case, without going into great detail, is that a government was involved in the assassination attempt of another head of state, using its embassy and diplomatic personnel as active participants in the plot. The Bulgarians also went to great lengths to cover the trail and make the assassination appear to be the work of a lone gunman. (For further study on the conspiracy, I recommend The Time of the Assassins by Claire

Sterling--an exhaustive investigative report on the plot to kill the Pope.)

Italian authorities arrested one Bulgarian, Sergei Ivanov Antonov, who had been head of the state airline in Rome, but again the diplomats involved escaped prosecution. Both had returned to Bulgaria, one on "leave", the other at the normal end of tour", before warrants were issued for their arrests. Both refused to return to Italy and also claimed immunity from prosecution and questioning [Ref. 19]. Another major crime was committed and at least two of the perpetrators, who abused privileges and operating guidelines of an embassy, were never punished.

C. PALESTINE LIBERATION ORGANIZATION

The Palestine Liberation Organization (PLO) is a more general example which illustrates the abuses of diplomatic privileges and state support of terrorism. The PLO is a bold group of revolutionaries operating mainly against the nation of Israel. In fighting for a new Palestinian State, the PLO has conducted acts of terror against Israel and Israeli citizens worldwide. It has gained international notoriety and not a little support for its cause. Most of its support, directly and indirectly, in a theoretical sense (i.e., sympathetic to its goals) comes from Middle Eastern nations and states from North Africa. In a more practical manner, the PLO receives support from the Soviet Union and

its satellites in the form of money, arms, and refuge. Soviet support is not given because the Soviets believe in an autonomous or independent Palestine but rather for the advantage they can gain in the region by the destabilizing effect of terrorism and war and the eventual collapse of the Israeli government.

There is overwhelming evidence of support by the Soviet Union for the PLO other than obvious things such as Yasser Arafat, head of the PLO, being a regular visitor to Soviet embassies. He has been granted status as head of state and is a regular visitor to Moscow as well. Thanks to a successful raid of PLO headquarters in Beirut by Israeli military forces, reams of documents were discovered which proved that the Soviets support Arafat and his organization extensively. The papers discovered included records of training of terrorists by Soviet military personnel. Also found were recorded discussions between top persons in the PLO with leaders of the Soviet Union concerning financing, arms, training, and targets. [Ref. 20]

The Soviet Union recognizes the PLO as a legitimate nation fighting a war of national liberation. As such the Palestinians have been recognized as "patriots in defense of a legitimate right to return to their native land" [Ref. 20: p. 33]. Since 1974 the official status of the PLO has increased in the Soviet Union to the point of opening an

office in Moscow which was granted embassy status in 1981. The leaders of the two governments have regular meetings and high ranking PLO personnel are regular visitors to Soviet embassies and consulates throughout the Middle East [Ref. 20: pp. 34-35]. In addition to providing arms openly to the Palestinians, the Soviet and Cuban embassies in Cyprus have a key role in smuggling weapons to the PLO and diplomatic fronts are used to deliver intelligence information to the PLO for targeting purposes [Ref. 20: pp. 50-52]. The Soviets openly and unashamedly provide arms and other support to the PLO and yet still abuse the privileges and immunities of their embassies by covertly supporting the PLO terrorists. The implications of this practice are serious for causing future problems.

D. PERSONNEL PRACTICES

The original intent for opening embassies and consulates and maintaining diplomatic relations among nations was to foster goodwill and provide a means for conducting talks and negotiations in all areas of relations including economics, military support and treaties, and technical research. Embassies and consulates have also grown to be intercessors for their citizens who may have problems while visiting foreign countries and the missions have become public relations firms advertising their nations and promoting their culture. The people assigned to diplomatic missions

have numerous tasks but the most important ones come under the heading of official business concerning relations between states and reporting to the leaders of their states items of importance concerning those relations [Ref. 21]. Most states also assign military attaches to their missions as advisors in military matters. Everyone assigned to a mission will naturally acquire information of importance to his own state through observing open media, talking with local citizens and observing daily activities in the country to which he is assigned. Passing such information on to supervisors is not unethical nor is it an abuse of privileges and immunities granted to diplomats. The apparent trend, however, is to assign persons to missions with the specific task of intelligence collection.

The Soviet Union routinely assigns highly trained agents of the KGB (Soviet Intelligence Service) to its missions with the specific goal of covert intelligence collection. Also, every person assigned to a Soviet embassy or consulate receives some training from the KGB in intelligence collection methods. This practice applies to embassies and consulates of Soviet controlled nations as well. The Soviets also use their embassies as command posts for their KGB agents involved in terrorist activities [Ref. 22]. As discussed earlier, Soviet agents provide intelligence information to members of the PLO and other groups through their embassies and consulates around the world.

The practice of making embassies and consulates intelligence collection centers or warehouses for weapons deliveries is a dangerous one and assigning personnel to those missions whose primary job is espionage negates the intent and the specifications of the Vienna Convention. Continuing in this manner will jeopardize true diplomatic relations and destabilize an already fragile international political order. It is important for governments to allow diplomats to talk and find other methods for spying.

Over 2,000 Soviet agents, many in diplomatic positions, from various nations have been discovered and/or expelled in the last several years for charges directly related to espionage [Ref. 22: pp. 509-561]. The number of cases indicates that this is not an accident or coincidence, but willful disregard of rules of acceptable international behavior.

IV. COUNTERING THE ABUSES

It is evident that abuses of diplomatic privilege and immunity have taken place and the potential exists for further abuse. It is important to examine that potential and try to determine also if the abuses will increase. After determining that a serious problem exists and may very likely get worse, someone must formulate measures to combat the problem. No one can accurately predict the future but an examination of the historical evidence should indicate that the probability is high that the problem of abusing diplomatic privilege will increase if allowed to continue unchecked.

The question of what can be done to stop the abuses is difficult to answer. The solutions must involve most nations of the world in cooperation with each other. Typical answers are to enforce current agreements or to change those agreements to close loopholes and stop abuses. Such answers sound easy enough, but history shows that international agreements take years to formulate and even more years to ratify. After this process is complete, arguments usually arise concerning definitions and applications of specific articles of the agreements. The most difficult thing to accomplish in any international venture is cooperation among nations. Ideological and

political differences between peoples almost always negates a real system of cooperation. The nature of man forces him to vie for the position of greatest advantage.

A. POSSIBILITIES FOR INCREASED ABUSES

The previous chapter presented evidence that proved that diplomatic privileges and immunities were abused or that the intent of the Vienna Convention was circumvented. Many people will argue that the specific cases of abuse were merely isolated incidents carried out by a small minority of governments and diplomatic personnel. Those same people will further argue that there is no "smoking gun" (i.e., catching a perpetrator in the act) evidence in the other cases, merely circumstantial evidence or unfounded allegations. The questions that are not addressed by those who fail to perceive a problem are: how many political figures have vanished or died mysteriously without any evidence as to the perpetrators? How many weapons have been supplied by diplomatic pouch to terrorists or those who would attempt to overthrow legitimate governments? What covert activities are continuing under the guise of diplomatic operations in various countries? Is it not possible that the relatively few cases that were brought to the attention of the public are only the tip of the iceberg and in reality serious crimes are being committed on a regular basis involving the abuse of diplomatic privilege?

It is possible that the primary means of transporting weapons to terrorist bands is the diplomatic pouch and the safe haven for assassins is the embassy--inviolable by the receiving state. It is also possible and probable that states that support or direct terrorism will continue to use their embassies as a covert means of the support.

The scope of the problem is tremendous and a few data and some not unreasonable hypothetical examples can be used to illustrate this. In the United States alone there are approximately 1,500 embassies and consulates in operation, not including missions to the United Nations in New York, and other international organizations which are granted some diplomatic or consular status (i.e., Organization of American States, International Monetary Fund offices, etc.). The United States currently maintains diplomatic relations with 148 nations and the government grants full immunity to approximately 20,000 people including ambassadors, staffs, and families [Ref. 23]. (This figure does not include employees of consulates or the special missions listed above.) This means that potentially 20,000 persons could commit crimes in this country and not be punished. Obviously, of the 20,000 foreign nationals serving their governments in the United States only a handful, if any, would be involved in criminal or even questionable activities just as the representatives of America serving

abroad are honorable, hardworking people carrying out their assigned duties and nothing more. The 1,500 embassies and consulates are real potential hiding places for criminals avoiding detection or arrest by U.S. authorities, though it is unlikely that they are used as such. These figures and arguments are not quoted to scare anyone or to "cry wolf" but simply to show the possibilities for problems.

There are several ways that privileges could be abused to commit crimes. There are purely criminal acts against persons or property such as robbery, rape, assault, or homicide and there are acts of politically inspired violence and terrorism. Important to this study are those acts which can be defined as terrorism. The following hypothetical cases will further examine the potential problem with scenarios which are possible and though they are criminal acts, they would fall under the definition of terrorism because of the political motivation. (It is important to note that these are purely hypothetical examples. It is not my intent to accuse or make any allegation against any state.)

(1) In Los Angeles an outbreak of violence against Turkish citizens and property including consular employees takes place in the course of a month which leaves seven Turks dead, eighteen injured and thousands of dollars of property damage including damage to the Turkish Consulate in Los Angeles and destruction of two consular vehicles. Armenian terrorists claim responsibility and promise to continue the attacks to avenge the injustice of the Turkish government against Armenians and to publicize their cause.

In Istanbul, government officials decide that they have had enough and decide to retaliate in kind and with force sufficient to eradicate the problem, either by eliminating all the terrorists or by creating such an atmosphere of fear as to deter future incidents. Three men are sent to the Turkish Embassy in Washington D.C. They are high-ranking officials with full diplomatic status whose mission is to go on an inspection tour of the nine Turkish Consulates throughout the United States.

Upon arrival at the consulate in Los Angeles the three "diplomats" are given a list of twenty suspected Armenian terrorists. Within a week twenty people are dead and several more injured in violent attacks throughout Los Angeles. Subsequent local police investigations turn up little evidence except that the weapons used were sophisticated automatic types and all of the people killed were American citizens. Some of the victims had some minor connections to terrorist activities but no significant proof. After completing their inspection tour in Los Angeles the three Turks go to Houston, Texas to visit the consulate there and then back to Washington D.C. for a few days before they return to Turkey.

(2) The Czechoslovakian Embassy in Washington D.C. receives two crates with diplomatic seals from its government. A few days later two men of Middle Eastern appearance visit the Czechoslovakian mission for about two hours. When they leave, their limousine has two crates in its trunk. Approximately one week later the Defense Minister of Israel arrives at National Airport in Washington D.C. for a visit with the U.S. Department of State. The Israeli Ambassador to the United States meets his visiting minister at the airport and the two leave for the embassy in the Ambassador's limousine. As the car travels along Interstate 395 into the city it suddenly explodes killing the driver and both statesmen inside. The force of the blast also causes two other cars on the highway to crash killing one American and seriously injuring three others. Investigations of the explosion reveal that a Soviet-made rocket propelled grenade (RPG-7) was probably used in the attack but there is no trace to the source or the perpetrators.

(3) A conservative U.S. Congressman from Tennessee was a strong anti-communist spokesman and was continuously stirring the fight against the Soviet Union and its puppets. He had often proposed legislation to oppose support of any form to the Soviets or any organization in the United States which had ties to the USSR, the Eastern

(1) eliminate all agreements and diplomatic relations;
(2) rescind all immunities; (3) enforce current agreements;
or (4) change the agreements.

The first--to eliminate all agreements and diplomatic relations--is the most radical and probably the most unrealistic. The necessity for constant access between states is well established and the problem of closing all embassies and consulates is greater than the problem of abusing the privileges granted those missions. Since men, and hence governments, can not by nature coexist peaceably, there must be a means of continuing negotiations and talks to keep small disagreements from becoming major wars. Embassies and consulates also serve other functions such as supporting their citizens who are visiting foreign lands. Closing embassies and consulates would require states to send representatives back and forth every time a crisis arose, wasting time and resources and decreasing efficiency.

Rescinding all immunities is also not an effective way to solve the problem. Diplomats have important functions to perform and the time wasted and problems arising from official or unofficial harassment of these diplomats is also a greater problem than that of abusing the system. If a member of a mission to a foreign state spends all of his time answering questions or giving account of his actions in response to fabricated allegations, he will not be able to

do his job and the mission may as well be closed. The logical conclusion follows that to solve the problem either enforce the current agreements already codified or change those agreements.

1. Enforce Current Agreements

The Vienna Convention on Diplomatic Relations (and the Convention on Consular Relations) was the culmination of tremendous efforts to create specific international regulations governing the conduct of states in diplomatic relations. The intent of the Convention was to simplify and codify accepted practices. One reason for the rules was to make it easier for nations to work together and negotiate problems. Talking is better than fighting over every minor disagreement. The articles also make it easier for the diplomats to accomplish their tasks. The solution to the problem of abuse of diplomatic privilege that sounds simple, is for the world to enforce the agreements. Every nation should examine its policies and practices and alter them as necessary to fall within the limits established by the Convention. There are some minor definitional problems but every government which has signed and agreed to the Convention should understand the basic intent and could, if it wanted, follow the articles in such a way that no one could question its motives.

The Preamble to the Vienna Convention specifically defines the intent of the articles and there are articles

which state the reason for the convention, the responsibilities of states to adhere to the articles and means of redress if violation occur. The only way to ensure complete adherence to the Vienna Convention without making any changes is through international cooperation.

a. International Cooperation

The term international cooperation brings to mind many utopian ideas such as world peace, complete trust and brotherly love. With a system of complete international cooperation including those utopian ideas there would be no need for a Vienna Convention. Since all states would trust each other and be content with their lot there would not be any problems. We would all be citizens of the world and the negotiations between nations would be open and honest and diplomats would have no need for protection and immunities.

Complete international cooperation is indeed a Utopian aspiration. The nature of man will never allow such a cooperation to occur. There is a possibility, however, of a system of semi-cooperation (i.e., effective cooperation in specific areas). In the case of diplomatic relations it is possible for the nations of the world to cooperate by agreeing to abide by the letter of the law of the Vienna Convention and by establishing and accepting an impartial judicial system to hear cases of transgressions. This judiciary would necessarily be empowered to impose sanctions

upon offenders. It is important that such a judiciary be more effective than the current World Court. The World Court has no power to enforce its decisions as nations are allowed simply to refuse to abide by those decisions. One possibility is a court which would try the diplomats accused of abusing privileges. The diplomats would keep their immunity while serving in foreign nations which would minimize the problem of harassment, but the receiving state would have a more stringent way of protecting itself against abuses of diplomatic privilege. The court would have to have some way of punishing those persons found guilty. A neutral prison would have to be established or a system of monetary fines created. A person found guilty would also never be eligible for diplomatic status again. It is important to establish some way to enforce the current Convention or it will not be as effective as it could be. The only viable alternative is to change the agreements.

Enforcing the Vienna Convention is not easy and establishing an impartial judiciary would be extremely difficult. A major consideration would be the time involved to implement such a system given the nature of international negotiations. Also important is the necessity for a system of checks and balances within the postulated judiciary to prevent this additional system from becoming abused. An example of check and balance would be the organization of

the court to take account of ideologically motivated judgements by West- and East- bloc judges. Check and balance would be through the establishment of equal numbers of bloc judges and the conscious addition of at least three judges from countries not aligned with either East or West. The judiciary and the checks and balances within it would be difficult to establish and implement but necessary if international cooperation were going to work through effective functioning of the Vienna Convention.

2. Change the Agreements

Changing the agreements of the Vienna Convention is not a new idea. In fact, but not surprisingly, a recent demand for changes in the current agreements has come from the government of Bulgaria, a puppet of the Soviet Union, which has been implicated in a very serious abuse of diplomatic status [Ref. 24]. The Bulgarians want specific changes in the rules governing the diplomatic bag making it more difficult for states to abuse the privilege of the bag, but most western governments oppose any such changes. Most governments do not want the diplomatic bag detained or inspected in any way because, quite frankly, they are sending equipment and supplies to their embassies that they would rather not have publicized. The equipment is not necessarily an abuse of the privilege but rather an accepted means of transporting communications equipment and similar

items which the sending states prefer remain anonymous and protected. The Bulgarian request for changing the articles concerning the immunity of the diplomatic pouch would lessen the protection of the pouch and allow states greater discretion in inspecting, detaining, or refusing entry of the pouch. On the surface this request seems to be detrimental to the use of the diplomatic bag. If the bag is used for its designed purpose, however, no problem should arise. The bag with a diplomatic seal is supposed to be protected from interference by the receiving state but it is not a conduit for transporting questionable items. If the sending state is not willing to reveal the articles being sent to its embassy, maybe it should not be sending them.

Changing the agreements is as hard or harder than enforcing current rules. In order to change the Vienna Convention another meeting would have to be convened to hear the proposed changes, incorporate them into the existing articles, send them to all signatory nations for inspection, revision, and recommendations, and finally, after several iterations of this process, send the revised final draft of the new convention around the world for ratification. The original Vienna Convention took several years to go into effect, any changes would probably take more time and in the end have little result. This is because after all the negotiations for a proposed change the end result would probably be no significant change at all.

Two other possibilities exist for changing the Vienna Convention. The first is to start over from scratch and the other is to add articles to codify enforcements of the agreements (i.e., allow specific sanctions against offenders) and to establish some means of verifying compliance without hindering the diplomatic mission. Both of these solutions would also be very tedious and probably not make an appreciable difference. In the first case, if an attempt is made to start over and write a completely new document, where would it start? The articles of the Vienna Convention are basically good and any attempt to draft new legislation would inevitably result in simply rewording the existing articles. The time and effort to effect such a change is not warranted. Adding more articles or amendments to the Convention would be the same as trying to change existing articles. A tremendous amount of time and effort would probably be wasted. It would be, however, a step in the right direction.

Shortly after the shooting incident in London in April, 1984, the United States Senate considered a bill making it a federal felony in the U.S. for a foreign diplomat to use a firearm to commit a felony. The U.S. State Department opposes the legislation because it undercuts the absolute immunity of diplomats from criminal prosecution and would allow reciprocal restrictions placed

on our diplomats abroad [Ref. 25]. The fear of reciprocity, considering the judicial systems of some nations which exercise less than due process, is a real threat to our diplomatic agents overseas. In addition to the problem of reciprocity the bill represents a potential challenge to the Convention which could seriously undermine the basic good of the agreements. The bill (S.2771) was not acted on before the Congressional session ended in 1984 but there are plans to reintroduce it during the next Congress with companion legislation for a resolution to the President calling for a request to amend the Vienna Convention (Appendices A and B). This action may raise some more problems, but it will also send a message to the world that the United States does not intend to sit idly by and let the abuses continue. The State Department argument about the problem of reciprocity is a valid one but probably not as serious as feared. Senator Allen Specter (Republican, Pennsylvania) stated in his testimony before the Senate on the merits of S.2771 that the slight risk that some country might fabricate charges against American diplomats is worth taking. He further argued that the amount of time needed to change the Vienna Convention should not deter us from making the effort and showing the world that we are serious [Ref. 26].

Changing the Vienna Convention is a difficult task and probably an unproductive one, but necessary. The intent

of the Vienna Convention is to protect bona fide diplomats from harassment or interference with their duties, not a sanction for criminal activity. Diplomats should not commit crimes and if they do they should be punished.

V. CONCLUSION

The study of international terrorism is a popular activity today. There are many political groups that practice terrorism. Terrorists have a wide spectrum of weapons and tactics. A variety of psychological characteristics make up the terrorist. A serious student of terror can find an abundance of information ranging from an historical analysis to the research on counter-terrorism tactics. Making the connection between international terrorism and diplomacy is a relatively new field of study. There has been some mention of the problem by some good authors of the subject (Ray Cline and Claire Sterling, for example), but not until the relatively recent events directly attributable to abuse of diplomatic privilege has there been any real concern over the problem. The U.S. Department of State has begun to address the topic and is investigating methods to combat the problem. However, at this time, the official State line in this area is to maintain the status quo. Acting legal advisor Dan McGovern of the State Department said in his testimony before the Senate Judiciary Committee in July, 1984, that the U.S. should not enter into any attempts to change the Vienna Convention unless the outcome is likely to be a net gain for

the United States [Ref. 27]. Mr. McGovern also agreed with the London Economic Summit in its Declaration on International Terrorism issued June 9, 1984 in its three proposals for addressing and combatting the problem of abuse of diplomatic privilege. Those proposals were:

- (1) Closer cooperation and coordination between police and security organizations and other relevant authorities, especially in the exchange of information, intelligence, and technical knowledge;
- (2) Use of the powers of the receiving state under the Vienna Convention in such matters as the size of diplomatic missions, and the number of buildings enjoying diplomatic immunity;
- (3) Consultation and as far as possible cooperation over the expulsion from their countries of known terrorists, including persons of diplomatic status involved in terrorism. [Ref. 28]

Terrorism is not a dying fad, but a growing threat. Secretary of State George Shultz called terrorism "a contagious disease that will inevitably spread if it goes untreated" [Ref. 29]. Decisive action is required if the problem is to be eradicated. We probably will never totally destroy the practice of terrorism but we can seriously hamper the terrorists by taking away their weapons.

There are three fundamental ways in which diplomatic privileges and immunities are being misused. They are criminal, political, and personal. Another brief examination of the factors that make up these three areas may shed further light on the potential problem.

The least serious of the areas is that of personal abuses. The cases discussed previously involved sending

shirts to a laundry via diplomatic pouch or importing canned foods which aren't available in the host country using the diplomatic bag are examples. Such abuses are not serious and in some cases are even comical, but they are abuses and should be stopped.

Criminal acts associated with abuse of diplomatic privilege are a more serious concern. The criminal acts which involve abuse of diplomatic privilege can be classified in two categories--violent or non-violent. Violent crimes committed by persons enjoying diplomatic immunity would include homicide, rape, or assault. An example of this is the case of a Greek diplomat who punched a San Francisco police officer when the officer gave him a ticket for a traffic violation [Ref. 30]. Non-violent crimes committed by diplomats include smuggling drugs, jewels, gold, or counterfeit money. These crimes are already a major concern of law enforcement agencies worldwide. Exploiting diplomatic laws to commit such acts aggravates the problem and counters the efforts to reduce crime.

The final area of concern in the abuse of diplomatic agreements is political. The political misuse of privileges and immunities may also be broken down into subsets. The subsets are intelligence collection and support of terrorism. The Soviet Union is the most conspicuous

offender of using its embassies and consulates for intelligence centers. The KGB operates from Soviet missions worldwide and it is safe to assume that other states practice the same abuse, although probably not on so grand a scale. The two incidents in London in 1984 and the attempt to kill the Pope in 1981 are the best publicized incidents of abusing diplomatic privilege through terrorist acts. They are also among the most serious known incidents to date.

It is easy to classify abuses of diplomatic privileges and immunity into one of the fundamental areas noted above. The problem is not new but it has taken on a more serious complexion. Too many "minor" abuses have become commonplace and are accepted or condoned. This had led to the growth of the problem. We have buried our heads for a long time but the danger has not gone away.

The purpose of this thesis is neither to employ scare tactics nor to magnify the problem beyond its true scope but to bring to light a serious problem with enormous potential for becoming worse. The case for combatting diplomatic abuse cannot be overstated. If one act of terrorism is committed through the abuse of a diplomatic privilege or immunity it is too many. We must not become complacent by rationalizing away the problem with statistics that "prove" that the problem is not significant. The fact that more

Americans die each day in traffic accidents than in a year of terrorist attacks is not germane. This is a problem that can and must be solved; accidents will always happen, but terrorism can at least be deterred.

It is imperative that embassies and consulates retain their original designed functions and diplomats be allowed to perform their diplomatic functions and those alone. The security of our nation and the stability of the world demand it.

APPENDIX A

II

SENATE BILL S.2771

98TH CONGRESS
2D SESSION

S. 2771

To protect the internal security of the United States against international terrorism by making the use of a firearm to commit a felony by foreign diplomats in the United States a Federal felony.

IN THE SENATE OF THE UNITED STATES

JUNE 15 (legislative day, JUNE 14), 1984

Mr. SPECTER (for himself and Mr. DENTON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect the internal security of the United States against international terrorism by making the use of a firearm to commit a felony by foreign diplomats in the United States a Federal felony.

- 1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.
- 2 That (a) chapter 44 of title 18, United States Code, is
- 3 amended by adding at the end thereof the following:
- 4 929. Foreign diplomats
- 5 "(a) It shall be unlawful for--
- 6 "(POA) any member of a foreign diplomatic mis-
- 7 sion in the United States entitled to immunity from the

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1 criminal jurisdiction of the United States under the
2 provisions of the Vienna Convention on Diplomatic Relations, done on April 18, 1961; or

4 "(B) any member of a foreign consular post in the
5 United States entitled to immunity from the criminal
6 jurisdiction of the United States under the provisions of
7 the Vienna Convention on Consular Relations, done on
8 April 24, 1963,

9 to use a firearm to commit any act constituting a felony
10 under the criminal laws of the United States or any State.

11 "(b) Whoever violates this section shall be punishable by
12 a fine of \$10,000 or by imprisonment for 10 years, or both.

13 "(c) For purposes of this section—

14 "(1) the term "member of a foreign diplomatic
15 mission" includes any individual described by Article
16 1(b) of the Vienna Convention on Diplomatic Relations, done on April 18, 1961; and

18 "(2) the term "member of a foreign consular post" includes any individual described by Article 1(g) of the Vienna Convention on Consular Relations, done on April 24, 1963."

22 (b) The analysis for chapter 44 of title 18 United States
23 Code is amended by adding at the end thereof the following:

1929. Foreign diplomats.

APPENDIX B

III

SENATE RESOLUTION S.RES.395
98TH CONGRESS
2D SESSION **S. RES. 395**

Urging the President to renegotiate the Vienna Convention on Diplomatic Relations to eliminate immunity for diplomats engaging in assaults with firearms or explosives.

IN THE SENATE OF THE UNITED STATES

JUNE 6, 1984

Mr. SPECTER submitted the following resolution; which was referred to the Committee on Foreign Relations

RESOLUTION

Urging the President to renegotiate the Vienna Convention on Diplomatic Relations to eliminate immunity for diplomats engaging in assaults with firearms or explosives.

Whereas article 31 of the Vienna Convention of 1961 provides:

"A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state," thus granting absolute and complete immunity for all crimes, including murder by assassination;

Whereas this grant of full immunity was based on the assumption that either accredited diplomats would not commit heinous crimes or that, pursuant to article 37 which provides "The immunity of a diplomatic agent from the jurisdiction of the receiving state does not exempt him from the jurisdic-

tion of the sending state," any diplomats committing such crimes would be prosecuted by their own government;

Whereas the recent machinegunning by diplomats of Libya from their London Embassy in which eleven dissident Libyan students were injured and a British policewoman was killed, reportedly on instructions radioed from Tripoli, began a new era in the history of diplomacy and showed complete contempt for human life and international law and proved that the established assumptions about lawful behavior and home government prosecution are no longer valid: Now, therefore, be it

- 1 *Resolved*, That it is the sense of the Senate that in order
- 2 both to deter assassinations and other armed assaults and to
- 3 bring to justice any diplomats committing such grave of-
- 4 fenses, the President of the United States should seek a re-
- 5 negotiation of the Vienna Convention as to immunity from
- 6 criminal jurisdiction with the objective of amending article 31
- 7 to exempt from such immunity murder and other grave
- 8 crimes involving assault with firearms or explosives.



LIST OF REFERENCES

1. U.S. Department of State, Patterns of Global Terrorism: 1983, September, 1984.
2. U.S. Department of State, International Terrorism: A Long Twilight Struggle, August 15, 1984.
3. London Economic Summit, Declaration on International Terrorism, June 9, 1984.
4. Wilson, Clifton, E., Diplomatic Privileges and Immunities, University of Arizona Press, 1967.
5. Denza, Eileen, Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations, Oceana Publications, 1976.
6. United States Senate, Hearing Before the Senate Committee on Foreign Relations on H.R. 7819, May 24, 1978.
7. New York Times, January 12, 1961 and July 23, 1964.
8. Wilson, Diplomatic Privilege, p. 137.
9. The Washington Post, April 17, 1984.
10. The Washington Post, April 24, 1984.
11. Smith, William, "We Want Them Out," Time Magazine, pp. 42-44, May 7, 1984.
12. The Washington Post, July 5, 1984.
13. New York Times, July 17, 1984.
14. British Broadcasting Company, "Summary of World Broadcasts," January 31, 1985.
15. Sterling, Claire, The Terror Network, p. 83, Holt, Rinehart, and Winston, 1981.
16. The Washington Post, May 13, 1981.
17. Sterling, Claire, The Time of the Assassins, p. 3, Holt, Rinehart, and Winston, 1983.

18. Dobbs, Michael, "The Man Who Shot the Pope," The Washington Post, October 13-16, 1984.
19. Sterling, The Time of the Assassins, p. 157.
20. Cline, Ray S., and Alexander, Yonah, Terrorism: The Soviet Connection, Crane, Russak, and Co., 1984.
21. Wilson, Diplomatic Privilege, p. 23.
22. Barron, John, KGB, The Secret Work of Soviet Secret Agents, The Reader's Digest Press, 1974.
23. Senate Hearing on H.R. 7819.
24. Testimony of Acting Legal Advisor Dan McGovern before the Senate Judiciary Committee, Subcommittee on Security and Terrorism, July 24, 1984.
25. McGovern Testimony.
26. Congressional Record: U.S. Senate, June 6, 1984.
27. McGovern Testimony.
28. London Economic Summit, Declaration on International Terrorism.
29. Shultz, George P., U.S. Secretary of State, "Terrorism and the Modern World," address on October 25, 1984.
30. United States Senate, Hearing Before the Subcommittee on Citizens and Shareholders Rights and Remedies on S.476, S.477, S.478, S.1256, S.1257, and H.R. 7819.

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